IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1727 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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MAYUR MAHESHBHAI RANA
Versus
STATE OF GUJARAT

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Appearance :
MR ANKUR Y OZA for Applicant
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/09/2007

ORAL JUDGMENT

1. By way of this petition, under Article 227 of the Constitution of India, the petitioner – original accused has

prayed for an appropriate order quashing and setting aside the order dated 26.04.2007 passed by the learned Chief Judicial Magistrate, Surat in Muddamal Application No. 102 of 2007, confirmed by the learned Presiding Officer, Fast Track Court No.3, Surat vide judgment and order dated 17.05.2007 in Revision Application No. 163 of 2007 and further prayed for release of Muddamal – Motor Cycle in favour of the father of the petitioner – Maheshbhai Rana.

2. The petitioner is owner of one Hero Honda Splender Plus – Motor cycle bearing registration No. GJ-5-EC-5363. A FIR came to be filed against the petitioner being C.R.No.III 5095 of 2007 on 08.04.2007 for the offences punishable under Sections 66(1)B and 65E of the Bombay Prohibition Act, 1949 ('***Prohibition Act***' for short) alleging inter-alia that the petitioner was caught with 50 liters of country liquor, same was carried and/or transported on the said motor cycle in 50 plastic bags of 1 liter each. That during the course of investigation, aforesaid motor cycle came to be seized by the Investigating Officer as Muddamal. The petitioner is detained under the provisions of Prevention of Anti Social Activities Act ('***PASA***' for short). The petitioner submitted an application being Muddamal Application being No.102 of 2007 under Section 451

of the Criminal Procedure Code ('***Cr.P.C.***' for short) in the Court of learned Chief Judicial Magistrate, Surat for handing over Muddamal-Motor cycle to him and/or his father Maheshbhai Rana. That the learned Chief Judicial Magistrate, Surat vide judgment and order dated 26.04.2007 dismissed the said application by observing that the said Muddamal-Motor cycle was earlier also seized during the course of investigation as the same was used for transporting illegal liquor and; that same was earlier released on certain conditions and one of the conditions was that the said vehicle shall not be used again for illegal purpose and at that time the motor cycle was used by changing number plate. Said motor cycle came to be used again for illegal purpose and if the same is released, it is likely to be used for committing the offence under the Prohibition Act, therefore, the learned Chief Judicial Magistrate, Surat dismissed the said application. Being aggrieved and dissatisfied with the order passed by the learned Chief Judicial Magistrate, Surat dated 26.04.2007 in Muddamal Application No. 102 of 2007, the petitioner preferred Criminal Revision Application No. 163 of 2007 and the learned Presiding Officer, Fast Track Court No.3, Surat vide judgment and order dated 17.05.2007 dismissed the said Revision Application confirming the order passed by the learned trial Court. Being aggrieved

and dissatisfied with aforesaid two orders, the petitioner – original accused has preferred the present petition under Article 227 of the Constitution of India.

3. Mr.Ankur Oza, learned Advocate appearing on behalf of the petitioner-original accused has vehemently submitted that both the Courts' below have materially erred in not releasing Muddamal-vehicle in favour of the petitioner and/or his father Maheshbhai Rana. It is submitted that by keeping said vehicle ideal the condition of the vehicle would be deteriorated. Mr.Oza, learned Advocate has submitted that as the petitioner is detained under the provisions of PASA, it is not likely to be used by the petitioner and same will be used by his father and; that it will not be used for any illegal purpose by his father. Therefore, it is requested to release the vehicle seized. Mr.Oza, learned Advocate has relied upon the decision of the learned Single Judge of this Court in the case of ***Jitenbhai Khantilal Shah v/s. State of Gujarat*** rendered in *Special Criminal Application No. 751 of 2005* as well as the decision of the Hon'ble Supreme Court in the case of ***Sunderbhai Ambalal Desai v/s. State of Gujarat*** reported in *(2002) 10 SCC 290* in support of his above submission.

4. The petition is opposed by Mr.K.T.Dave, learned APP

and has submitted that as the vehicle is used for transporting illegal liquor and; that earlier also the very vehicle was used for transporting illegal liquor and same was released by the learned trial Court by imposing conditions; that the said vehicle shall not be used for any illegal purpose, still the said vehicle has been used for illegal purpose. Considering the modus – operandi and change of number plate, playing mischief with the number plate and as observed by the learned trial Court that the said vehicle is likely to be used again for illegal purpose if the vehicle is released, it is requested to dismiss the present petition. It is submitted that the present petition is filed under Article 227 of the Constitution of India and considering the orders passed by both the Courts' below, it cannot be said that there is jurisdictional error committed by both the Courts' below which requires interference of this Court in exercise of powers under Article 227 of the Constitution of India. Therefore, it is requested to dismiss the present petition.

5. Heard the learned Advocates appearing on behalf of the respective parties.

6. At the outset, it is required to be noted that vehicle in question is seized by the Investigating Officer when it was found that the said vehicle was used for committing offence

and transporting illegal liquor. It is also required to be noted that earlier also very vehicle was seized from the petitioner when the same was used for transporting illegal liquor. An application was made before the learned trial Court for custody of the Muddamal – vehicle and the same was handed over the petitioner on certain conditions and one of the conditions was that the said vehicle shall not be used for any illegal purpose. Inspite of that again the petitioner has used the said vehicle for illegal purpose and as rightly observed by the learned trial Court, the Court is not required to pass order again and again, that the petitioner will not use the said vehicle for any illegal purpose. At this stage the *modus-operandi* of the petitioner in using the said vehicle in question for illegal purpose is also required to be considered. When earlier the vehicle was seized, it was found that same is used for illegal purpose; number plate was changed and mischief was played i.e. instead of 'GJ-5-EC-5363' it was mentioned as 'GJ-5-DF-5363'. Again when the vehicle was seized, during the course of investigation it was found that number plate mentioned is 'GJ-5-EC-536' instead of 'GJ-5-EC-5363'. This shows the conduct and criminal intention on the part of the petitioner. Considering above and considering the fact that if the vehicle in question is released in favour of the petitioner and/or his

father, it is likely to be used again for illegal purpose and considering above when both the Courts' below have rejected the application to release the vehicle, it cannot be said that there is any illegality committed by both the Courts' below.

7. Considering aforesaid facts and circumstances of the case and judicial discretion exercised by the learned Magistrate, the judgment relied upon by the petitioner will not be helpful to the petitioner. The facts of the present case are different from the facts of the cases cited by the learned Advocate. Under the circumstances, this is not a fit case to exercise powers under Article 227 of the Constitution of India and even otherwise there is no jurisdictional error much less than law committed by the Courts' below while passing the impugned orders.

8. For the reasons stated above, there is no substance in the present petition, same deserves dismissal and accordingly it is dismissed.

[M.R.Shah, J.]

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